

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NETCRAFT CORPORATION,

Plaintiff,

v.

AT&T MOBILITY LLC,  
BOOST MOBILE, LLC,  
CELLCO PARTNERSHIP,  
SPRINT NEXTEL CORPORATION, and  
T-MOBILE USA, INC.,

Defendants.

C.A. No. 07-651 (GMS)

**JURY TRIAL DEMANDED**

**NETCRAFT CORPORATION'S REPLY TO  
THE COUNTERCLAIM OF CELLCO PARTNERSHIP**

Netcraft Corporation replies to the counterclaims of Cellco Partnership as follows.

Except as expressly admitted below, Netcraft denies each and every allegation in Cellco's counterclaims:

**JURISDICTION AND VENUE**

1. In response to paragraph 34 of the counterclaim, Netcraft admits that federal subject matter jurisdiction exists pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367. Netcraft denies there is jurisdiction exists pursuant to 28 U.S.C. § 1332. Both Netcraft and T-Mobile USA, Inc. are citizens of Delaware. *See* Doc. No. 1 at ¶ 1; Doc No. 35 at ¶ 36. That destroys complete diversity, which is a prerequisite for diversity jurisdiction. *See Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806). What is more, Cellco Partnership has not properly alleged its citizenship, so it would be impossible to determine whether its allegation there is diversity jurisdiction is correct, even if T-Mobile were not a party. According to Cellco Partnership, it is a "general partnership." *See* Doc. No. 31 at 1. For purposes of assessing whether there is diversity jurisdiction, the citizenship of a general partnership is determined based on the citizenship of each partner in addition to the citizenship of the partnership itself. *See Carden v. Arkoma Assoc.*, 494 U.S. 185, 194-195 (1990) (rejecting contention that, in assessing the

citizenship of an artificial entity, “the court may consult the citizenship of less than all of the entity’s members”). The counterclaim does not allege the citizenship of either of the partners—Verizon Communications, Inc. or Vodafone Group PLC. Therefore, its allegations would be inadequate to establish diversity jurisdiction, even if the citizenship of T-Mobile were not an impediment.

2. In response to paragraph 35 of the counterclaim, Netcraft admits that the Court has personal jurisdiction over it in this case by virtue of its having filed the complaint, but denies any remaining allegations of this paragraph.

3. Netcraft admits the allegations of paragraph 36 of the counterclaim.

**COUNT I**  
**(Non-Infringement)**

4. Netcraft incorporates by reference its response to paragraphs 34 to 36 of the counterclaim.

5. Netcraft admits the allegations of paragraph 38 of the counterclaim.

6. Netcraft admits the allegations of paragraph 39 of the counterclaim.

7. Netcraft denies the allegations of paragraph 40 of the counterclaim.

8. Netcraft denies the allegations of paragraph 41 of the counterclaim.

**COUNT II**  
**(Invalidity)**

9. Netcraft incorporates by reference its response to paragraphs 34 to 41 of the counterclaim.

10. Netcraft denies the allegations of paragraph 43 of the counterclaim.

11. Netcraft admits the allegations of paragraph 44 of the counterclaim.

12. Netcraft denies the allegations of paragraph 45 of the counterclaim.

13. Netcraft denies the allegations of paragraph 46 of the counterclaim.

**PRAYER FOR RELIEF**

WHEREFORE, Netcraft prays for judgment:

- A. Dismissing Cellco's counterclaim with prejudice;
- B. Granting judgment to Netcraft on the counterclaim;
- C. Awarding to Netcraft its costs and attorneys' fees pursuant to 35 U.S.C. § 285;

and

- D. Granting to Netcraft such other and further relief as may be just and appropriate.

**DEMAND FOR A JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Netcraft demands a trial by jury on all issues so triable.

Dated: February 11, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2008, I electronically filed with the Clerk of Court NETCRAFT CORPORATION'S REPLY TO THE COUNTERCLAIM OF CELLCO PARTNERSHIP using CM/ECF which will send electronic notification of such filing(s) to the following Delaware counsel. In addition the filing will also be sent via electronic mail:

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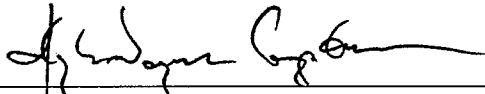
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